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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

MIKE GLEASON, Chairman
 WILLIAM A. MUNDELL
 JEFF HATCH-MILLER
 KRISTIN K. MAYES
 GARY PIERCE

IN THE MATTER OF QWEST CORPORATION'S
 PETITION FOR ARBITRATION AND APPROVAL
 OF AMENDMENT TO INTERCONNECTION
 AGREEMENT WITH ARIZONA DIALTONE, INC.
 PURSUANT TO SECTION 252(b) OF THE
 COMMUNICATIONS ACT OF 1934, AS
 AMENDED BY THE TELECOMMUNICATIONS
 ACT OF 1996 AND APPLICABLE STATE LAWS.

DOCKET NO. T-01051B-07-0693

DOCKET NO. T-03608A-07-0693

PROCEDURAL ORDER**BY THE COMMISSION:**

On December 17, 2007, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration under 47 U.S.C. § 252(b) and Arizona Administrative Code ("A.A.C.") R14-2-1505 ("Petition"). In its Petition, Qwest requested that the Commission resolve issues related to the Interconnection Agreement ("ICA") between Qwest and Arizona Dialtone, Inc. ("Arizona Dialtone"), which Qwest asserts derive from Arizona Dialtone's refusal to enter into an amendment to the current ICA ("ICA Amendment") that would implement changes related to unbundled access to mass market local circuit switching, changes that Qwest asserts are mandated by federal law, specifically the Federal Communications Commission's ("FCC's") Triennial Review Remand Order¹ ("TRRO") and 47 C.F.R. § 51.319(d).²

On March 27, 2008, a Procedural Order was issued requiring Arizona Dialtone and Qwest to file, by April 3, 2008, documents indicating whether any genuine issue of material fact exists in this matter and, if so, identifying the issue; whether any legal issue other than those identified in the Procedural Order needs to be resolved in this matter and, if so, identifying the legal issue; and whether the party desires to present testimony in this matter. The Procedural Order scheduled oral

¹ *In re* Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 F.C.C.R. 2533 (2005)(Order on Remand).

² For additional procedural history, please see the Procedural Order issued on March 27, 2008.

1 argument in this matter for April 17, 2008, at 10:30 a.m. and stated that the oral argument would be
2 changed to an evidentiary hearing if either Arizona Dialtone or Qwest indicates in its filing that a
3 genuine issue of material fact exists in this matter or that it desires to present testimony. The
4 Procedural Order also required Arizona Dialtone to file, by April 3, 2008, ICA Amendment language
5 that accurately reflects its current position in this matter and required Qwest to file, by the same date,
6 copies of the public utility commission orders cited in footnote 15 of its Motion. Finally, the
7 Procedural Order required Qwest and Arizona Dialtone to share equally the costs for transcription
8 and to arrange and pay to have expedited transcripts ("dailies") prepared and provided to the
9 Commission's Hearing Division for the oral argument or hearing scheduled in this matter.

10 On April 1, 2008, Qwest filed a Motion for Modification of Hearing Schedule, requesting that
11 the hearing date scheduled for April 17, 2008, be moved to April 16, 2008, due to counsel's previous
12 travel plans. Qwest also stated that it had been authorized by Staff and Arizona Dialtone to state that
13 they agree with this request.

14 On April 1, 2008, a Procedural Order was issued vacating the oral argument scheduled for
15 April 17, 2008; scheduling the oral argument instead to take place on April 16, 2008, at 9:30 a.m.;
16 and clarifying that the expedited transcripts to be arranged for that proceeding need not be "dailies,"
17 but must be completed and delivered to the Commission's Hearing Division by the morning of April
18 21, 2008.

19 On April 3, 2008, Arizona Dialtone filed a Statement of Issues in Dispute and Request to
20 Present Testimony. In its filing, Arizona Dialtone identified 19 "mixed issues of fact and law" that
21 remain in dispute. Arizona Dialtone also provided notice that it desires to present testimony and
22 other evidence on those issues in this arbitration proceeding and stated that it anticipates the
23 evidentiary hearing to be concluded within one day. Arizona Dialtone also separately filed its current
24 proposed ICA Amendment language.

25 Also on April 3, 2008, Qwest filed a Statement Regarding Lack of Material Issues of Fact,
26 indicating that the only remaining issue in this matter is the appropriateness of Qwest's language
27 permitting back-billing of the FCC's interim rate during the one-year TRRO transition period and of
28 the resale rate for the period after the one-year TRRO transition period. Qwest stated that there are

1 no genuine issues of material fact bearing on the legal issues of waiver, estoppel, and "alternative
2 arrangements," and that the Commission should proceed to decide the legal issues identified in the
3 March 27, 2008, Procedural Order. Qwest also separately filed copies of the public utilities
4 commission orders cited in footnote 15 of its Motion.

5 Because Arizona Dialtone has requested the opportunity to present testimony and other
6 evidence in this matter, it is appropriate to allow the parties that opportunity, as contemplated by the
7 March 27, 2008, Procedural Order.

8 IT IS THEREFORE ORDERED that the **oral argument scheduled for April 16, 2008, at**
9 **9:30 a.m., or as soon thereafter as is practicable, in the Legal Conference Room** at the
10 Commission's offices in Phoenix, Arizona, **shall proceed as an evidentiary hearing, with oral**
11 **argument also to be provided as to legal issues.**

12 IT IS FURTHER ORDERED that Qwest and Arizona Dialtone shall share equally the costs
13 for transcription and shall arrange and pay to have expedited transcripts prepared and provided to the
14 Commission's Hearing Division for the hearing scheduled in this matter. **Qwest and Arizona**
15 **Dialtone shall arrange to have the transcripts in this matter completed and delivered to the**
16 **Commission's Hearing Division by the morning of April 21, 2008.**

17 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
18 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
19 *pro hac vice*.

20 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
21 Communications) applies to this proceeding and shall remain in effect until the Commission's
22 Decision in this matter is final and non-appealable.

23 IT IS FURTHER ORDERED that the Arbitrator may rescind, alter, amend, or waive any
24 portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

25 DATED this 4th day of April, 2008.

26
27 
28 SARAH N. HARPRING
ARBITRATOR

1 Copies of the foregoing mailed/delivered
this 4th day of April, 2008, to:

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25 By: 
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27 Secretary to Sarah N. Harpring
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